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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,466	04/12/2004	Richard Marcis	DKT02184	3136

7590 01/30/2006

BorgWarner, Inc.  
Patent Administrator  
3850 Hamlin Road  
Auburn Hills, MI 48326-2872

EXAMINER
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NGUYEN, MINH H

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,466	<b>Applicant(s)</b> MARCIS ET AL.	
	<b>Examiner</b> Ninh H. Nguyen	<b>Art Unit</b> 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 7 is/are rejected.
- 7) ☒ Claim(s) 2,4,5 and 8-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/02/05 have been fully considered but they are not completely persuasive.

Applicant argues that neither Berg nor Arnold teaches the vane post and the actuation post extend from the same side of the vane. Applicant further points out that the vane post 26 of Berg extends from the opposite side of the actuation post according to Figure 5 of Burg; and that the vane post 68 extends in opposite direction to that of the actuation post.

The Examiner respectfully disagrees. Figure 2 of Burg clearly shows the vane post 26 also extends in the same direction from the first surface as that of the actuation post 68.

However, Applicant's observations regarding the Arnold reference are correct. Therefore the rejections of claims based on the Arnold reference are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Berg (4,657,476).

Berg discloses a vane for use in a variable geometry exhaust gas driven turbocharger (Figs. 2-5), comprising a vane body 48 adapted for pivoting around a pivot axis, the vane body

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having first and second planar surfaces perpendicular to the pivot axis on respective axial ends (Fig. 5), a vane bore 66 in the body, the vane bore opening to the first planar surface (shown at 54), a vane post 26 received within the vane bore such that the vane post extends substantially perpendicularly from the first planar surface, a single actuation post 68 extending perpendicularly from the first planar surface; and means 42 for pivoting the plurality of vanes.

Regarding claim 3, Berg discloses a variable turbocharger geometry assembly (Figs. 1-5) comprising a turbine housing 10 with at least one supply channel 14 in the turbine housing for supplying exhaust gas, at least one turbine wheel (not shown) rotatably supported on a shaft within the turbine housing, the at least one supply channel being arranged to supply the exhaust gas to the at least one turbine wheel, a plurality of static pivot points arranged as a ring of elements 22; a ring of actuation elements 42 coaxial with the plurality of static pivot points arranged as a ring of elements; an array of vane 48 adjacent to at least one of the plurality of static pivot points arranged as a ring of elements and the ring of actuation elements, each of the vanes having opposite first and second planar surfaces; a vane post 26 extending between the plurality of static pivot points arranged as a ring of elements and at least the first planar surface of each vane of the array of vanes; and actuation posts 68 extending between the ring of actuation elements and at least the first planar surface of each vane of the array of vanes wherein a pivoting movement of the rings relative to the other, causes pivoting movement of the array of vanes.

***Allowable Subject Matter***

4. Claims 2, 4-6, and 8-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Ninh Nguyen whose telephone number is (571) 272-4823. The examiner can be normally reached on Monday-Friday from 7:30 A.M. to 5:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached at (571) 272-4820. The fax number for this group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, please go to <http://pair-direct.uspto.gov> or contact the Electronic Business center (EBC) at 866-217-9197 (toll-free).

  
NINH H. NGUYEN  
PRIMARY EXAMINER

Nhn  
January 24, 2006